

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CARPENTERS FRINGE BENEFIT FUND OF ILLINOIS, <i>et al.</i> ,)	
)	
Plaintiffs,)	CIVIL ACTION
)	
vs.)	NO. 18 C 4140
)	
DE GRAF CONCRETE CONSTRUCTION, INC., an Illinois corporation,)	JUDGE SHARON JOHNSON COLEMAN
)	
Defendant.)	

**PLAINTIFFS' MOTION TO REOPEN CASE FOR THE PURPOSE OF
ENFORCING THE TERMS OF THE PROMISSORY NOTE AND ENTERING
JUDGMENT AGAINST DEFENDANT, DE GRAF CONCRETE CONSTRUCTION,
INC. AND MICHAEL G. PIRRON, INDIVIDUALLY**

NOW COME Plaintiffs, CARPENTERS FRINGE BENEFIT FUNDS OF ILLINOIS, *et al.*, by their attorneys, and move the Court for the entry of an order reopening this action for the purpose of enforcing the terms of the Promissory Note entered into between the parties in October 2018 and entering judgment against Defendant, De Graf Concrete Construction, Inc., an Illinois corporation (“Defendant” or “De Graf”), and Michael G. Pirron, individually (“Pirron”). In support of the Motion, Plaintiffs state as follows:

1. This action was originally brought by the Plaintiffs, the Trustees of the jointly-administered, labor-management employee benefit plans known as the Carpenters Fringe Benefit Funds of Illinois, alleging, *inter alia*, that Defendant breached its obligations under the terms of the collective bargaining agreement adopting the Agreements and Declarations of Trust under which the Plaintiff Funds are maintained. Specifically, Plaintiffs allege that Defendant failed to remit payment of contributions for work performed on its behalf by beneficiaries of the Plaintiff Funds. The

Complaint was brought pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1132, 1145.

2. On October 8, 2018, a Notice of Voluntary Dismissal incorporating the terms for settlement agreed to by the parties as set forth in the Promissory Note was filed with this Court (a copy of the Notice of Voluntary Dismissal is attached hereto as Exhibit 1).

3. On October 9, 2018, this Court dismissed the instant litigation without prejudice pursuant to the parties' payment plan with leave to reinstate by April 9, 2019 (a copy of the Notification of Docket Entry entered on October 9, 2018 [No. 20] is attached hereto as Exhibit 2).

4. Pursuant to the Promissory Note (a copy of which is attached hereto as Exhibit 3), De Graf and Pirron offered, and the Plaintiff Funds agreed to accept, the total amount of \$21,438.55, plus interest on the declining balance accrued at the rate of 1.5% per month, over a period of 13 months, in settlement of amounts due for the time period January 2018 through August 31, 2018.

5. Pursuant to the terms of the Promissory Note, De Graf and Pirron promised to promptly submit, on a monthly basis, contributions due and owing for the months of October 2018 and subsequent months due by the 15th of the month following the work month, with respect to the monthly reports and fringe benefit contributions that may become due throughout the payment schedule set forth in the Promissory Note.

6. If De Graf and Pirron are in default, the Funds may declare the entire unpaid principal balance on the Promissory Note and all accrued unpaid interest immediately due and payable without notice, demand or presentment and the entire unpaid principal balance on the Promissory Note and all accrued unpaid interest shall be collectable immediately.

7. On October 16, 2018, De Graf filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code.

8. On February 20, 2019, the U.S. Bankruptcy Court for the Northern District of Illinois entered an Order dismissing De Graf's bankruptcy proceeding.

9. De Graf and Pirron have failed to pay any amounts due on the Promissory Note. Additionally, De Graf has not submitted its monthly fringe benefit contribution reports and any contributions due thereon for October 2018 forward as set forth in the Promissory Note.

10. For all the reasons stated, the Plaintiffs hereby move the Court for the entry of an Order reopening this action for the purpose of enforcing the terms of the Promissory Note and entering judgment against De Graf and Pirron. Specifically, Plaintiffs request:

- A. That judgment be entered in favor of Plaintiffs and against Defendant, De Graf Concrete Construction, Inc. and Michael G. Pirron, individually, to include the amount of \$21,438.55, being the balance due on the Promissory Note.
- B. That judgment be entered in favor of Plaintiffs and against Defendant, De Graf Concrete Construction, Inc., to include an additional \$2,345.50 in attorneys' fees incurred by the Plaintiffs in this matter, which were incurred in enforcing the Promissory Note, which includes one-half (.50) hour for the preparation of the instant motion and one (1) additional hour of attorneys' fees to appear for the hearing on the instant motion.
- C. That Plaintiffs have such further relief as may be deemed just and equitable by the Court.

/s/ Catherine M. Chapman

Catherine M. Chapman
Attorney for Plaintiffs
BAUM SIGMAN AUERBACH & NEUMAN, LTD.
200 West Adams Street, Suite 2200
Chicago, IL 60606-5231
Bar No.: 6204026
Telephone: (312) 216-2565
Facsimile: (312) 236-0241
E-Mail: cchapman@baumsigman.com

CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on or before the hour of 5:00 p.m., this 8th day of April 2019, she electronically filed the foregoing document (Motion to Reopen Case) with the Clerk of Court using the CM-ECF system, which will send notification to the following:

Ms. Beverly P. Alfon
SmithAmundsen, LLC
150 N. Michigan Avenue, Suite 3300
Chicago, IL 60601
balfon@salawus.com

/s/ Catherine M. Chapman

Catherine M. Chapman
Attorney for the Plaintiffs
BAUM SIGMAN AUERBACH & NEUMAN, LTD.
200 West Adams Street, Suite 2200
Chicago, IL 60606-5231
Bar No.: 6204026
Telephone: (312) 216-2565
Facsimile: (312) 236-0241
E-Mail: cchapman@baumsigman.com